Supreme Court, U.S.
FILED
DEC 1
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-258

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1989

STATE OF CALIFORNIA,
By Its Attorney General,
JOHN K. VAN DE KAMP,
Petitioner,

vs.

AMERICAN STORES CO., ALPHA BETA ACQUISITION CORP., and LUCKY STORES, INC.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

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November 30, 1989

Petition for Certiorari Filed August 10, 1989
Certiorari Granted October 16, 1989

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RELEVANT DOCKET ENTRIES
Ninth Circuit Court of Appeals

Court of Appeals Docket #: 88-6467 CONFAT SEALED
EMERG CLOSEDFiled: 10/4/99
State of California v. American Stores Co., et al
Appeal from: Central District of California

- -

Case type information:
1) civil
2) private
3)

- -

Lower court information:

District: 0973-2 : cv-88-5331
presiding judge: David V. Kenyon, Judge
Date Filed: 9/1/88
Date order/judgment: 9/29/88
Date NOA filed: 10/3/88

- -

Fee status: paid

- -

Prior cases:
None
Current cases:
None

Proceedings include all events.
88-6467 State of California v. American Stores Co., et al

STATE OF CALIFORNIA
Plaintiff-Appellee

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v.

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Frank Rothman, Esq.
(See above)

Stephen M. Axinn
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LUCKY STORES, INC.
Defendant - Appellant

Paul T. Denis
(See above)

Frank Rothman, Esq.
(See above)

Stephen M. Axinn
(See above)

Proceedings include all events. CONFAT SEALED
88-6467 State of California v. EMERG CLOSED
American Stores et al

10/4/88 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Sent appellant(s) civil appeals docketing statement. (ec)

10/4/88 Filed Appellant Lucky Stores, Inc., Appellant Alpha Beta Acq. Corp., Appellant American Stores Co. emergency motion circuit Rule 27-3 (CIVATT) [88-6467]; served on 10/4/88 [1288558] (ec)

10/4/88 Received Appellant Lucky Stores, Inc., Appellant Alpha Beta Acq. Corp., Appellant American Stores Co.'s brief in 15 copies, and 5 excerpts of record in 2 volumes. (These briefs & excerpts are in sealed envelopes, so we are unable to determine if the brief & excerpt is in correct form in accordance with the Rules. The briefs are premature, as no briefing schedule has been set - referred 1 copy to CIVATT) [88-6467]

10/5/88 Filed certificate of record RT filed in DC 10/3/88. [88-6467] [88-6467] (lu)

10/5/88 Filed joint emergency mtn of American Stores Co., Alpha Beta Acquisition Corp., Lucky Stores, and State of California to expedite appeal under circuit rule 27-3
w/Stipulation regarding the filing of confidential information under seal. (10/5) (CIVATT) [88-6467] [1299702] (dmd)

10/5/88 Received Appellant Lucky Stores, Inc., Appellant Alpha Beta Acq. Corp., Appellant American Stores Co.'s brief in 15 copies of 48 pages. (10/5) (This brief would appear to be the same as the one submitted under seal. It is entitled "Public Record Version Redacted." Also premature, no briefing schedule - referred 1 copy to CIVATT) [88-6467] (jlc)

10/6/88 Recvd ltr dtd 10/5 from Frank Rothman, Esq. of Skadden, Arps, Slate, Meagher & Flom re: Stephen M. Axinn of NY will be arguing and will not be available 10/31 or 11/1. (CIVATT) [88-6467] (dmd)

10/11/88 Filed order (FLETCHER, THOMPSON) Aplts' emergency motion for an expedited hearing is granted in part. The requirement of filing a civil appeals docketing statement is waived and no prebriefing conference shall be conducted. The clerk shall set this matter for oral argument in Pasaden the week of December 5, 1988. Aplts' opening brief and excerpts received on October 4, 1988

and aplts' brief entitled "Public Record Version REdacted" are ordered filed. Aplts' supplemental brief shall be filed by 5:00 p.m. on October 154, 1988. Aple's reply brief, if any, shall be filed by 5:00 p.m. on October 26, 1988. No extensions of time will be allowed. The parties stipulation concerning the filing of documents under seal is construed as a motion to file documents under seal. So construed, the motion is granted. [1299702-1] [88-6467] (jw)

10/11/88 Filed original and 15 copies Appellant Lucky Stores, Inc., Appellant Alpha Beta Acq. Corp., Appellant American Stores Co. opening brief and excerpts of records, previously received. Both the briefs under seal and the "Public Version." [88-6467] (jw)

10/13/88 Filed Appellee State of California emergency motion to file a separate answering brief addressing issues to be raised in the supplemental brief this court directed the aplts to file on 10/14/88; in the alternative, aple requests order waiving the 50 page limit for answering brief. (10/13) (CIVATT) [88-6467] [1325574] (jlc)

10/14/88 Filed order (FLETCHER) aple's emergency motion requesting permission to file a supplemental answering brief is granted. Aple's answering and supplemental briefs shall be filed by 5:00 p.m. 10/21/88. [1325574-1] [88-6467] (jlc)

10/14/88 Filed aplt's supplemental brief (27 pgs) original + 15 copies + 5 supplemental excerpts of record. (10/14) [88-6467] (dmd)

10/21/88 Calendar materials being prepared. [88-6467] (aw)

10/24/88 Received "UNDER SEAL" orig. & 15 copies 15 State of California's brief of 48 pages, and 15 excerpts of record; served on 10/21/88. (Late - sent to calendar with memo for distribution to panel & vault) [88-6467] (jlc)

10/24/88 Received "UNDER SEAL" original and 15 copies Appellee State of California supplemental brief of 19 pages, served on 10/21/88. (Late - sent to calendar unit with memo for distribution to panel & vault) [88-6467] (jlc)

10/26/88 CALENDARED: PASA 12/8/88 10:00 a.m. Courtroom 2 [88-6467] now at 9:00 a.m. (dd)

10/26/88	Received orig. & 15 copies American Stores Co., Alpha Beta Acq. Corp., Lucky Stores, Inc.'s reply brief submitted (UNDER SEAL). (Rec'd only as aple's brief has not been filed) (PANEL & vault) [88-6467] (jlc)
10/31/88	Rec'd 1 copy each of (Public File Version) the aple's brief & supplemental brief received on 10/24. (casefile) [88-6467] (jlc)
10/31/88	Rec'd orig. & 15 (Public Record Version Redated) of aplt's reply brief. (Orig + 1 copy to casefile; discarded remaining copies) [88-6467] (jlc)
11/3/88	Filed order (Deputy Clerk: gb) The "Brief of Pltf-Aple," "Supplemental brief of pltf-aple," and "California Excerpt of record". Received "under seal" by the court on October 24, 1988, are ordered filed. The Reply brief of defts-aplts" received "under seal" by the court on October 26, 1988, is ordered filed. [88-S467] (jw)
11/3/88	Filed original and copies appellee State of California's brief, & suppl. excerpts, previously received. [88-6467] (jw)
11/3/88	Filed original and copies American Stores Co., Alpha Beta Acq. Corp., Lucky Stores, Inc. reply brief, previously received. [88-6467] (jw)

11/21/88	Filed Appellant American Stores Co., Appellant Alpha Beta Acq. Corp., Appellant Lucky Stores, Inc.'s motion for leave to correct brief (Panel) served on 11/17/88 [1458846] [88-6467] (ec)
11/21/88	Received Appellant American Stores Co., Appellant Alpha Beta Acq. Corp., Appellant Lucky Stores, Inc. second supplemental excerpts of record on appeal in 1 volumes. (11/18) (PANEL) (jlc)
12/1/88	Filed order (Deputy Clerk: gb) [1458846-1] The motion for leave to correct brief is granted. [1458846-1] [88-6467] (jw)
12/7/88	Received Appellee State of California letter dated Dec 6, 1988 re: three cases which have not been cited by any of the parties in the briefs already filed . note: The Attorney General's office sent 3 copies directly to the Pasadena office (for panel members) per telephone conversation with Deputy Atty. Gen. Horn [88-6467] (ec)
12/8/88	ARGUED AND SUBMITTED TO: WALLACE, POOLE, O'SCANNLAIN [88-6467] (db)

12/22/88	Filed as of 10/5/88, CERTIFIED RECORD ON APPEAL IN 10 VOLUMES: VOLS. 1-6, CLERK'S PLEADINGS; VOLS. 7-10, R/Ts (ORIGINALS). [88-6467] [88-6467] (jlc)
1/13/89	Opinion clerk to notify atty. Jeff Dahlstrom of decision. (714)661-8332. [88-6467] (mw)
1/25/89	Opinions Clerk will notify Attorney of decision. Jeff Dahstrom (714) 661-8332 [88-6467] (dem)
2/6/89	Received Appellant American Stores Co. letter dated 2/2 re: "requesting the Court's guidance on the proper procedures for bringing before the Court its request to modify the DC's preliminary injunction order...". (PANEL) [88-6467] (jlc)
3/1/89	Filed order (WALLACE, POOLE, O'SCANNLAIN) the parties are free to move the district court for modification of the preliminary injunction. If we are advised that the district court wishes to modify the preliminary injunction, we will consider ordering a limited remand to the district court for that purpose. [88-6467] (jlc)
3/8/89	Opinions clerk will notify attorney of the decision. Louis Trager, Examiner News, 777-7880 San Francisco. [88-6467] (ba)

3/31/89	FILED OPINION (WALLACE, author, POOLE, O'SCANNLAIN), AFFIRMED IN PART, REVERSED, AND REMANDED IN PART. Each side should bear its own costs. FILED AND ENTERED JUDGMENT [88-6467] (jlc)
3/31/89	JS-34 disposition reported. Termination on the merits after oral argument (Affirmed and Reversed) [88-6467] (jlc)
4/3/89	Filed Appellant Lucky Stores, Inc., Appellant Alpha Beta Acq. Corp., Appellant American Stores Co.'s motion to shorten the time of issuance of this court's mandate pursuant to FRAP 41(a).(4/3) (PANEL) [88-6467] [1586000] [88-6467] (jlc)
4/4/89	Received Appellee State of California letter dated 4/4 re: opposing aplt's pending motion. (PANEL) [88-6467] (jlc)
4/6/89	Filed order (WALLACE, POOLE, O'SCANNLAIN) aple State of california is requested to file a response to aplts' motion to shorten the time of issuance of this court's mandate. The response is due to be filed in San Francisco cn or before 4/12/89. [88-6467] (jlc)

4/12/89	Filed Appellee State of California's opposition to aplt's motion to shorten time for issuance of mandate [1587333-1]; served on 4/12/89. (PANEL hand delivered in S.F. & via overnite mail to DFO) [88-6467] (jlc)
4/14/89	[1591265] Filed original and 40 copies Appellee State of California petition for rehearing with suggestion for rehearing en banc. (15 pgs) (4/13) (PANEL & ALL ACTIVE JUDGES) [88-6467] (jlc)
4/20/89	Filed order (WALLACE, POOLE, O'SCANNLAIN) the motion of American Stores Co. to shorten the time of issuance of mandate is denied. [1586000-1] [88-6467] (jlc)
4/25/89	Sent another copy of petition for rehearing en banc to WAN. [88-6467] (jlc)
6/6/89	Filed order (WALLACE, POOLE, O'SCANNLAIN) dfdts-aplts are ordered to file a response to the pltf-aple's petition for rehearing & suggestion for rhrg. en banc within 14 days from the date of this order. [88-6467] (jlc)
6/20/89	Filed orig & 40 Appellants' response in opposition to petition for en banc rehearing. (6/20) (PANEL & ALL ACTIVE JUDGES) [1591265-1] [88-6467] (jlc)

6/26/89	Sent another copy of response of aplt's in opposition to petition for rhrg to ATG [88-6467] (jlc)
7/3/89	Filed order (WALLACE, POOLE, O'SCANNLAIN): the petition for rehearing is denied, and the suggestion for rehearing en banc is rejected. [88-6467] (dmd)
7/7/89	Filed Appellee State of California emergency motion to stay the mandate pending petition for writ of cert. (7/6) (PANEL) [88-6467] [1629123] (jlc)
7/7/89	Filed Defendants-Appellants' response in opposition to emnergency motion to stay the mandate pending petition for writ of cert. (7/7) (PANEL) [1629123-1] [88-6467] (jlc)

7/11/89 Filed order (WALLACE, POOLE, O'SCANNLAIN) the motion of California for a stay fo mandate for 30 days to file a petition for writ of certiorari with the USSC is granted, provided that California promptly file a bond or other security pursuant to FRAP 41(b) to reimburse American Stores Company, in the event that certiorari is not granted, for any loss occasioned by the delay of our mandate's issuing, from the date of this order. We partially remand this case to the DC to set the amount and nature of the security as soon as possible. [1629123-1] [88-6467] (jlc)

7/17/89 Filed amended order (WALLACE, POOLE, O'SCANNLAIN) the order filed in this case on 7/11/89, is amended to read as follows: The motion of California for a stay of mandate for 30 days to file a petition for writ of cert. with the USSC is granted. Pursuant to FRAP 41(b), we partially remand this case to the DC to determine whether a bond or other security or condition shall be required of California as a condition to this grant of stay. [88-6467] (jlc)

7/26/89 Filed Appellant Lucky Stores, Inc., Appellant Alpha Beta Acq. Corp., Appellant American Stores Co. emergency motion to vacate the stay of mandate. (7/26) (PANEL) [88-6467] [1637603] (jlc)

7/26/89 Filed order (POOLE, O'SCANNLAIN) the Dfdts-Aplts, American Stores Company, Alpha Beta Acquisition Corp., and Lucky Stores, have filed an emergency motion under Rule 27-3 requesting that the mandate now be issued forthwith. On 7/17/89, we stayed the issuance of mandate for a period of 30 days in order to permit the State of California, Pltf-Aple, to file a petition for cert seeking review of our opinion and order of 3/31/89, which reversed a preliminary injunction theretofore issued by the USDC. The DC's order forbade the Dfdts-Aplts from completing the integration of the operation of their Lucky Stores and Alpha Beta subsidiaries. Our order of 7/17/89 also provided for a limited remand to the DC to determine whether a bond or other security or condition should be required of California as a condition to granting the stay of mandate. The emergency motion advises that on 7/24/89, after hearing and argument pursuant to the limited remand, the DC ordered California to post a bond in the amount of $16,288,298 as the amount necessary to protect Dfdts-Aaplts against mandate. Dfdts-Aplts represent that the State of California has advised them that it intends not to post the bond as ordered, but rather intends to appeal the DC's bond order to this court and, if necessary, to the Supreme Court of the U.S. We order as follows: The State of

California is hereby ordered to file, not later than Noon on Friday, 7/28/89, a response to the emergency motion setting forth whether the representations therein correctly state the fact & amount of bond ordered by the DC; whether the State of California relies in declining to comply therewith. A copy of any such response shall be transmitted immediately to counsel for Dfdts-Aplts. This court will thereafter determine what action is appropriate. [88-6467] (jlc)

7/27/89 Received Appellee State of California letter dated 7/27 re: "We hereby request that the Court allow the State to Mon. noon, 7/31 to file a single document...". (PANEL) [88-6467] (jlc)

7/27/89 Filed order (POOLE, O'SCANNLAIN) the Atty. Gen. of California has requested an ext. until Noon, 7/31/89, within which to respond to our order of 7/26/89, to make opposition to the emergency motion which was the subject of that order, an also to present its own motion with respect to reduction or elimination of the bond fixed by the DC. Upon consideration of the circumstances, the motion for ext. is denied and the time fixed will stand. Upon receipt and consideration of the State's response, this court will determine whether additional submissions or other action may be appropriate. [88-6467] (jlc)

7/28/89 Filed Appellee State of California's response to orders dated July 26 & 27, 1989; declaration of Andrea Ordin. (7/28) (PANEL) [88-6467] (jlc)

7/31/89 Received Appellant American Stores Co. letter dated 7/31 re: "If the court desires a reply...". (casefile) [88-6467] (jlc)

8/1/89 Rec'd. original of California's response filed 7/28. (casefile) [88-6467] (jlc)

8/8/89 Sent letter to Frank Rothman, Esq. from Clerk of Court re: "We are in receipt of your transmittal dated 7/7/89 which was forwarded by Judge Wallace to this office for response. In future correspondence to this court please refer to Circuit Rule 25-2". [88-6467] (jlc)

8/10/89	Filed order (POOLE, O'SCANNLAIN) in Part III of its 7/28/89 response, beginning at page 5, the State of California argues that it is pursuing this litigation in its role as "parens patriae" on behalf of the welfare of its citizens and should not be held to the requirements of a financial bond as is generally the case in private litigation. The State cites several authorities in support of that position. The court now requests dfdts-aplts to address that issue by letter reply not to exceed 10 pgs., the submission to be made on or before the close of business, Mon., 8/14/89. No reply thereto is required unless the court specifically requests the same. [88-6467] (jlc)
8/11/89	Received Appellee State of California letter dated 8/10 re: "California has today filed its Petition for Writ of Certiorari...we will provide you with 4 copies of the petition under separate cover." (PANEL) [88-6467] (jlc)
8/11/89	Copy of letter dated 8/10 received from State of California to USSC re: "Enclosed for filing is California's Petition for Writ of Cert... please advise the Clerk fo the USCA of the filing.". (PANEL) [88-6467] (jlc)
8/14/89	Filed Defendants-Appellants' letter brief in response to order of 8/10. (8/14) (8 pgs) (PANEL) [88-6467] (jlc)

8/15/89	Rec'd. 4 (complimentary) copies of the State of California's petition for a writ of certiorari in the USSC. (8/10) (PANEL & casefile) [88-6467] (jlc)
8/17/89	USSC notification by telephone of the filing of cert on 8/10/89 - SC# 89-258. [88-6467] (jlc)
8/17/89	Filed Appellant Lucky Stores, Inc., Appellant Alpha Beta Acq. Corp., Appellant American Stores Co. emergency motion to issue mandate. (8/17) (PANEL) [88-6467] [1647585] (jlc)
8/17/89	Filed order (WALLACE, POOLE, O'SCANNLAIN) the mandate will issue on Monday, 8/21/89. [1647585-1] [88-6467] (jlc)
8/18/89	Received Appellant Lucky Stores, Inc., Appellant Alpha Beta Acq. Corp., Appellant American Stores Co. letter dated 8/18 re: "In light of yesterday's order, dfdts-aplts withdraw that motion...". (PANEL) [88-6467] (jlc)

8/21/89	Filed Supreme Court order (SC Date: 8/21/89) (O'CONNOR) upon consideration of the application of counsel for the petition and the response filed thereto, it is ordered that the execution & enforcement of the mandate of the USCA for the Ninth Circuit, case No. 88-6467, be, and the same is hereby, stayed pending the disposition by this Court of the petition for a writ of cert. Should the petition for a writ of cert be denied, this stay is to terminate automatically. In the event the petition for a writ of cert is granted, this stay shall continue in effect pending the sending down of the judgment of this Court. [88-6467] (jlc)

8/22/89	Filed Supreme Court amended order (SC Date: 8/22/89) (O'CONNOR) upon consideration of the application of counsel for the petitioner, and the response filed thereto, it is ordered that the execution and enforcement of the mandate of the USCA for the Ninth Circuit, case No. 88-6467, be, and the same is hereby, stayed pending the disposition by this Court of the petition for a writ of cert or further order of the Court. Should the petition for a writ of cert be denied, this stay terminates automatically. In the event the petition for a writ of cert. is granted, this stay shall continue pending the sending down of the judgment of this Court. This order is conditioned upon the posting of a good and sufficient bond with the Clerk of the USDC for the Central District of CA, the adequacy of such bond to be determined by that Court. (PANEL) [88-6467] (jlc)
8/22/89	Filed SC opinion (O'CONNOR) filed 8/22/89 in reference to the SC order filed 8/21 & the amended SC order filed 8/22 regarding the stay of mandate in the Ninth Circuit. (PANEL) [88-6467] (jlc)
8/22/89	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 89-258 filed on 8/10/89. [88-6467] (jlc)

89/25/89	Filed order (WALLACE, POOLE, O'SCANNLAIN) we vacate our orders requiring briefing, posting of bond, and staying the mandate, and we terminate our limited remand. The mandate has been stayed pursuant to the Amended Order of Justice O'Connor dated 8/22/89, conditioned upon the posting of a bond in the DC. [88-6467] (jlc)
9/22/89	Copy of letter dated 9/15 received from USSC to Chester H. Horn re: "An application from respondent for an order resubmitting the bond question was received 9/13/89 and presented to Justice O'Connor. Justice O'Connor has now called for a response to the application to be filed on or before noon, 9/21/89..." (PANEL) [88-6467] (jlc)
9/29/89	Copy of letter to Rex E. Lee dated 9/25 received from USSC re: "Your application for an order resubmitting the bond question to the USDC has been presented to Justice O'Connor, together with the response filed thereto and the reply brief. Justice O'Connor has endorsed on the application the following: DENIED Sandra D. O'Connor 9/25/89." (casefile) [88-6467] (jlc)

RELEVANT DOCKET ENTRIES
UNITED STATES DISTRICT COURT
No. 88-5331 KN(TX)

DATE	NR	PROCEEDINGS
9-1-88	am	1. Complt. Isd sums. Case may be ref'd to Mag Tassopulos for discvy.
		2. Appl for a TRO & for an OSC re P/I. pltf LODGED OSC TRO re P/I
		3. Memo of P/A in suppt of applf or a TRO & ORS re P/I. pltfs
		4. Memo in opposn to pltfs motn for a TRO. defts
		5. Declrn of Dr. Robert G. Harris re American/Luck in suppt of appl for a TRO & OSC re P/I. pltf ****UNDER SEAL****
		7. Exh one to complt for equitable relief for violation of title 15 USC secs 1 & 18 & pendent state claims. pltf ****UNDER SEAL****
		8. Declrn of Stephen M. Axinn in opposn to ptlfs motn for TRO. defts

9-2-88 am 9. Pltfs motn for a TRO: Crt reqst stmt frm cnsl for the state of calif. Cnsl address the matter of docms being placed under seal. The crt cont the matter to 9-6-88 @2pm. to allow more time for the crt to review the docms. M.O.

10. Declrn of H. Chester Horn, Jr., in suppt of pltfs appl for a TRO. pltf

11. Appl & ORD allow'g appran of non reas atty Stephen M. Axinn.

12. Appl & ORD allow'g apprnc of non resd atty Paul T. Denis.

9-6-88 am 13. Declrn of Richard Frederickson in opposn to pltfs motn for a TRO. defts

9-7-88 am 14. Note of ruling scheduling of hrg. pltf

15. TRO tht American Stores Co, Alpha Beta Acquisition Corp & Lucky Stores Inc & their respective successors & assigns, offrs, etc shall during the pendency of pltfs appl for a P/I be enjoined, restrained & ord'd.

16. OSC re P/I tht the defts American Stores Co, Alpha Beta Acquisition Corp & Lucky Stores Inc show cause bef 9-16-88 @pm why this & their respective successors & assigns, offers, etc should not during the pendcy of this action be enjoined & restrained & ord.

17. Proof of acknowledgement of receipt & acceptance of srv re TRO & P/I. pltf

9-8-88 am 18. Note of motn to dism, rentbl 10-24-88 @10am. defts LODGED propd ord

19. Memo in suppt of defts motn for reconsideration & modification of the TRO. defts

20. Declrn of Stephen M. Axinn in suppt of defts motn for reconsideration & modification of the TRO. defts

21. Ex parte appl for ord shorten'g ti on defts motn for reconsideration & modification of TRO; declrn of Stephen M. Axinn. defts LODGED propd ord

22. Memo in suppt of defts motn to dism. defts

23. Declrn of Lawrence A. Del Santo in suppt of defts motn for reconsideration & modification of the TRO. defts

*9-6-88	am	24. Pltf appl for TRO: Crt takes the matter under submission. M.O. (jc)
9-8-88	am	25. Stat conf: Crt & cnsl discuss TRO. Crt clarifies crt's ruling on TRO. M.O. (jc)
9-12-88	am	26. Stip & ORD tht defts motn to dism for failure to state a claim upon which relief can be granted will be hrd on 9-16-88 together w/pltfs motn for a P/I. All defts papers in resp to pltf motn for P/I will be srv by 9-14-88 @5pm. All ptlfs paper in resp to defts motn to dism will be srv by 9-14-88 @5pm.
		27. MODIFIED TRO tht American Stores Co, Alpha Beta Acquisition Corp & Lucky Stores Inc their resp successors & assigns, offers, etc be enjoined, restrained & ord, etc. (see orig docm in fi for further info)
9-13-88		28. Declrn of Robert P. Bermingham in suppt of objecns of 3rd pty The Vons Co, Inc & Safeway Stores, Inc to American Stores, reqst to prod docms srv on the Cal Atty Gen Safeway Stores Inc.

		29. Declrn of Bernat Rosner in suppt of objecns of Safeway Stores Inc to American Stores reqst to prod docms srv on the Calif Atty Gen. Vons & Safeway Stores Inc.
		30. Objecn to American Stores reqst to prod docms srv on the Calif Atty Gen. Vons Co Inc. & Safeway Stores Inc.
9-15-88	am	31. Declrn of Peter Max in opposn to ptlfs motn for P/I Amer Stores Co & Lucky Stores **UNDER SEAL**
9-15-88	am	32. Declrn of Donald Kaplan in opposn to pltfs motn for P/I. Defts Amer Stores Co & Lucky Stores, Inc.
		33. Declrn of Dr. M.A. Adelman in opposn to ptlfs motn for P/I. Defts Amer Stores Co. & Lucky Stores, Inc.
		34. Declrn of William O. Christy in opposn to pltfs motn for a P/I. Defts Amer Stores & Lucky Stores Inc
		35. Declrn of Gregory V. Woodin opposn to pltfs motn for a P/I. Defts Amer Stores Co & Lucky Stores Inc
		36. Declrn of Dr. Charles R. Handy. Defts Amer Stores Co & Lucky Stores Inc

37. Declrn of L.S. Skaggs in opposn to ptlfs motn for a P/I. Defts Amer Stores Co & Lucky Stores Inc

38. Declrn of Harley Delano in opposn to pltfs motn for a P/I. Defts Amer Stores Co & Lucky Stores Inc

39. Declrn of Richard London in opposn to pltfs motn for a P/I. Defts Amer Stores Co & Lucky Stores Inc

40. Declrn of John M. Lillie in opposn to pltfs motn for a P/I. Defts Amer Stores Co & Lucky Stores Inc

41. Declrn of John L. Guillory in opposn to pltfs motn for a P/I. Defts Amer Stores Co & Lucky Stores Inc

42. Appendix of other authorities cited in defts memo in opposn to ptlfs motn for a P/I. Defts Amer Stores Co & Lucky Stores Inc

43. Declrn of Keith M. Thye. Defts Amer Stores Co & Lucky Stores Inc ****UNDER SEAL****

44. Declrn of Edgard M. Grubb in opposn to pltfs motn for a P/I. Defts American Stores Co & Lucky Stores Inc ****UNDER SEAL****

45. Memo in opposn to pltfs motn for a P/I. Defts Amer Stoes Inc & Lucky Stores Inc ****UNDER SEAL****

46. Resp of State of Calif to motn to dism. ****UNDER SEAL****

47. Suppl memo of P/A in suppt of pltfs appl for a P/I. pltf ****UNDER SEAL****

48. Declrn of Robert W. Carson. plt

49. Declrn of H. Chester Horn, Jr. in suppt of Calif's motn to strike. pltf

50. Declrn of Owen Lee Kwong. pltf

51. Declrn of Harold C. Hofer. pltf

52. Declrn of Buzz Evers. pltf

53. Objens to & motn to strike portions of defts memo in suppt of defts motn to dism. pltf

9-16-88 am 54. Reply declrn of Robert G. Harris. pltf ****UNDER SEAL****

55. Resp of state of Calif motn to dism. pltf

56. Suppl memo of P/A in suppt of pltfs appl for a P/I. pltf

57. Reply declrn of Bruce W. Marion. pltfs

58. Reply declrn of Bruce W. Marion re hand. pltfs

59. Reply declrn of Willard F. Mueller. pltfs

60. Memo in opposn to pltfs objecns to & motn to strike portions of defts memo in suppt of defts motn to dism. defts

61. Reply memo in suppt of motn to dism & in opposn to pltfs motn for a P/I. defts

62. OSC re P/I defts motn to dism: Crt tks the matter under subm. Crt further ords tht the TRO will remain in effect until the crt issues its ruling on the P/I. Crt reqst tht cnsl submit briefs re Market Share Data by 9-21-88. M.O. (jc)

9-21-88 am 63. Suppl declrn of Peter Max in opposn to pltfs motn for a P/I. defts American Stores Co & Lucky Stores, Inc. ****UNDER SEAL****

64. Suppl memo regard'g Market definition & market structure & memo in opposn to the propd P/I. deft Amer. Stores Co & Lucky Stores Inc ****UNDER SEAL****

9-22-88 am 65. Suppl reply declrn of Robert G. Harris. pltf

66. Suppl memo on Clif concenteration trends. pltf

67. Reply memo regard'g product market definition. pltf

68. Declrn of H. Chester Horn, Jr. regard'g concentration trends. pltf

9-23-88 am 69. Reply memo regard'g market product market definition. defts

70. Declrn of Claude W. Edwards. pltf

9-27-88 am 71. The Court HEREBY ORDERS that the Temporary Restraining Order issued on September 7, 1988 and extended by order of the Court on September 16, 1988 will remain in effect until the Court rules. As the court stated in *State of Maine v. FRI*, 483 F.2d 439, 441 (1st Cir. 1973), "of course, as long as the hearing on the preliminary injunction is held expeditiously within the appropriate time frame, the district court should be able to extend the restraining order while it prepares its decision." Given the complexity of this matter and the fact that the Court requested additional information re market share data which parties submitted on September 21, 1988, the Court finds a reasonable extension fully within its discretion. The Court is mindful of the need for a prompt ruling in this matter. M.O.

9-28-88 am 72. Bef issu'g the Min Ord on 9/27/88 ext'g the TRO until crt reaches a decision in the matter, the crt's secretary was informed by the State of Calif tht the TRO would expire at close of business Tuesday. As a result of this info the crt found it appropriate to ext the TRO. M.O.

9-29-88 am 73. ORD re P/I; P/I

IT IS HEREBY ORDERED this 29th day of September, 1988, at 11:07 a.m., as follows:

That defendants American Stores Company, Alpha Beta Acquisition Corporation, and Lucky Stores, Inc., and their respective successors and assigns, officers, directors, agents, subsidiaries, divisions, groups, affiliates, representatives, employees and attorneys, and all persons acting in concert or participation with them, shall, in accordance with Federal Rule of Civil Procedure 65, during the pendency of this action, be enjoined, restrained and ordered, pursuant to 15 U.S.C. § 26, as follows:

1. Take all steps necessary to operate American Stores Company, Alpha Beta Acquisition Corporation and their subsidiaries, divisions and groups (collectively "American Stores"), independently of the assets and businesses of Lucky Stores, Inc. ("Lucky") in the State of California.

2. Refrain from taking any action to modify the status quo as to the California operations of Alpha Beta or Lucky as of September 6, 1988, other than in the ordinary course of business, and shall refrain from taking any further steps to merge or integrate the assets and businesses of American Stores' Alpha Beta California operations with

those of Lucky's California operations or any further steps to merge or integrate the assets and businesses of Lucky's California operations with those of American Stores' Alpha Beta California operations. (ENT 9-30-88) ntc by cpy to pltf

10/3/88 np 74. Fld Deft's notc of appeal to 9th Cir. C/A frm ord fld 9/29/88. $105.00 fing & dcck fee pd.

10-3-88 am 75. Note of ruling re P/I. pltf

10-3-88 am 76. Receipt for repts trans of hrg on 9-2-88(20); 9-6-88(46); 9-8-88(20); & 9-16-88.

77. Tranc designation & ord'g form.

*9-26-88 am 78. Motn to intervene as a pltf. Paul Bechtel

10-5-88 am 79. Paul Bechtel ("Applicant") has lodged with the Court a Motion To Intervene as a plaintiff in this action in order to assert the claims set forth in a proposed Complaint attached to Applicant's Motion. The proposed Complaint alleges breach of contract and tort claims against Lucky Stores stemming from negotiations between Applicant and Alpha Beta, Inc. regarding the lease of a property in Banning, California. Applicant brings his Motion To Intervene under Fed. R. Civ. P. 22(a), Intervention of Right. Rule 22(a) permits intervention in an action when,

> the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

However, Applicant has failed to demonstrate that disposition of this action may impair or impede the Applicant's ability to pursue the contract and tort claims alleged in his proposed Complaint or to otherwise protect any interests Applicant claims, allegedly relating to the transaction which is the subject of this antitrust action. (The

Court notes that the requirements for permissive intervention under Fed. R. Civ. P. 22(b), that an applicant's claim and the main action have a "question of law or fact in common", also appear not to have been met in this case.) Accordingly, Applicant Paul Bechtel's Motion To Intervene is HEREBY DENIED. M.O.

80. On September 29, 1988, the Court granted Plaintiff State of California's Application for a Preliminary Injunction. Due to an oversight, the Court did not explicitly rule on Defendants' Motion to Dismiss.

Consistent withthe Court's Order granting a preliminary injunction, Defendants' Motion to Dismiss is HEREBY DENIED *nunc pro tunc* to September 29, 1988. Pursuant to Fed. R. Civ. P 12(a), "the responsive pleading shall be served within 10 days after notice of the court's action." M.O.

10-6-88 am 81. ORD re crt guidelines & trial preparation.

10-14-88 am LODGED frm 9TH CCA: ORD tht Appellants' emergency motion for an expedited hearing is granted in part. The requirement of filing a civil appeals docketing statement is waived and no prebriefing conference shall be conducted. The clerk shall set this matter for oral argument in Pasadena the week of December 5, 1988. Appellants' opening brief entitled "Public Record Version Redacted" are ordered filed. Appellants' supplemental brief shall be filed by 5:00 p.m. on October 14, 1988. Appellee's answering brief shall be filed by 5:00 p.m. on October 21, 1988. Appellee's reply brief, if any, shall be filed by 5:00 p.m. on October 26, 1988. No extensions of time will be allowed.

The parties stipulation concerning the filing of documents under seal is construed as a motion to file documents under seal. So construed, the motion is granted.

10-21-88 am 82. ANSWER to complt. defts American Stores Co & Lucky Stores Inc

10-28-88 am 83. Memo in suppt of ord clarify P/I ord. defts LODGED propd ord

*10-27-88	am	84. Crt has recv'd defts telephonic reqst for a brief hrg on the scope of the P/I w/respec to the Fed. Trade Commission ord re divestiture of 37 stores. Crt reqst brief'g frm both ptys prior to schdul'g a hrg date. Pltf has 3 days frm receipt of defts papers to respd. M.O.
11-3-88	am	85. Resp to reqst for clarification of the P/I. pltf **UNDER SEAL**
11-4-88	am	86. Reply memo in suppt of ord clarify'g P/I ord. DEFTS
11-7-88	am	87. The crt has schdl'd a hrg on 11-8-88 @2pm. The crt does not wish to hr ext argument but merely reqst resps to certain questions. M.O.
11-8-88	am	88. Deft's reqst to clarify P/I ord: Crt hrs argument of cnsl. Crt takes the matter under subm. M.O. (kk)
11-9-88	am	89. Clarification of ord re P/I.
12-2-88	am	90. OSC tht cnsl show cause in writ'g nlt 12-15-88 why this action shld not be dism for non complt w/loc rule 6.2. Cnsl are advised tht the crt will consider the fing of the jnt rept of early meet'g on or bef 12-15-88 as a satisfactory resp to the OSC. M.O.

12-14-88	am	91. Jnt rept of early meeting. pltfs Fwd 6 orig clkrs files & 4 orig repts trans to 9th CCA
1-20-89	am	92. ORD re MSC set for 3-13-89 @9:30am.
2-1-89	sb	93. Receipt of reporter transcript 11-8-88 Reporter Transcript of 11-8-88
3-6-88	sb	94. Joint status report pltf LODGED COPY OF Ord C/A parties are free to move to district crt fr modification of the prelim inj
3-13-89	sb	95. MSC off cal pending appeal MO JC
6-23-89	sb	96. Declrn of Frank Rothman deft
6-28-89	sb	97. Stip to modification of prelim inj
7-13-89	sb	98. Hereby ord scheduled a hrg on 7-19-89 at 2pm pur to Ord of 9th Circuit State of Calif file a bond or other security as reimbursement to deft in the event that US Supreme Crt denied certiorari & deft have indicated to the crt that may wish to briefing in the matter deft should such brief NLT 7-17-89 & pltf may reply 7-19-89 10am MO NR

7-14-89	dc	LODGED ord frm US 9th CCA tht this case is partially remanded to dist crt to set the amount and nature of the security as soon as possbl.
7-18-89	sb	99. Notc of motn & memo in suppt of deft motn to require security pending decision on petn fr writ of Certiorari 7-21-89 2pm UNDER
		100. Declrn of Frank Roth in suppt of deft motn UNDER SEAL
		101. Declrn of Victor L Lund in suppt of motn UNDER SEAL
7-19-89	sb	102. Declrn of Dr Willard F Mueller in opp to deft motn to require Security pending decision on petn certiorari
		103. Declrn of Robert G Harris in opp to deft motn to require Security
		104. Declrn of A Sheridan Atkinson in opp to deft motn to req Securi
		105. Opp to State of Calif motn to require Security
7-20-80	la	106. Reply memo in suppt of dfts' mot to reqr scrty pndg decsn. dfts **UNDER SEAL**
7-21-89	la	107. Correctd version of reply memo in supt of mot. dfts **UNDER SEAL**

7-21-89	esl	108. Defts motn for setting of bond pending appeal. Crt hears argument of both cnsl. Crt takes the matter under submission. M.O. (R.C)
67-21-89	bg	109. Crt Ord tht mandate of the 9th Circuit C/A Ord re setting bond pending fur appeal is fld & spread upon the minutes of this U.S. District Crt. (ENT 7-26-89)
7-24-89	esl	110. ORD re motn to require security pending decision on petn for writ of Certiorari, hereby GRANTS deft's motn & HEREBY ORDS the State of Calif. to post a bond in the amt of $16,288,898 for the period frm 7/11/89 'til the Supreme Crt reconvenes on 10/1/89.
8-23-89	ca	111. Memo in suppt of requst to set the amt of the bond pursuant to supreme crt ord. Defts American Stores Co. & Lucky Stores, Inc.

8-21-89	ca	112. Stip & ORD to permit Lucky, a wholly-owned subsidiary of American, to purchase the parcels listed in Exh A hereto using funds in "Starker Trusts" formed by Alpha Beta Co. To permit American & its wholly-owned subsidiary American Stores properties, Inc. ("ASPI") to secure multi-parcel financing arrangements with properties owned by Lucky, provided tht title to such Lucky properties is not transfered fr the present holder thereof & further provided tht American, ASPI & Lucky remain free to sell such properties, if so required, pursuant to Crt Ord.
8-25-89	sb	113. Sugestion of State of Calif regarding amount of bond to Supreme Crt Ord
8-28-89	ca	114. Reply memo in suppt of request to set the amt of the bond. Defts American Stores Company & Lucky Stores, Inc.
8-25-89	ca	LODGED ORD, we vacate our ords requiring briefing, posting of bond & staying the mandate, & we terminate our limited remand. Routed to appeals section
8-30-89	ca	LODGED ORD setting amount of bond purs to supreme crt ord. Defts American Stores Company & Lucky Stores.

8-31-89	ca	115. ORD tht purs to the ord of justice Sandra Day O'Connor dated 8/27/89, bond is in the above-captioned mater at $10,000.00. Defts American Store Co. & Lucky Stores, Inc.
8-29-89	ca	116. Pltfs motn to set amt of Bond purs to Supreme Crt Ord. Crt hears argument of consl. Crt re sets bond at $10,000.00. M.O. C/R Rosa Nealy.
9-6-89	ca	117. The Crt has rec'd a letter frm defts consl re the State of Calif. Propsd findings of fact & conclusions of law & ord setting the amt of the bond. Purs to local rule 2.10, the crt is unable to consider such a letter. Consl is advised to call such matters to the crts attention by appropriate appli or motn fld in compliance with the local rules. M.O. C/R none.
9-6-89	ca	118. Obj to props findings of fact, conclusions of law & Ord setting the amt of bond. Defts. American Stores Co. & Lucky Stores, Inc.
9-7-89	ca	119. Resp to American Stores Obj to Propsd findings of fact. Atty for State of Cal.
9-13-89	sb	120. Finding of fact concl of law setting amount of Bond $10,00 to be post or deposit before 9-7-89

8-31-89 sb 121. Notc of posting Cash Bond in the amount of $10,000

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Filed

September 1, 1988

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA by its Attorney General, JOHN K. VAN DE KAMP, Plaintiff, v. AMERICAN STORES COMPANY, a Delaware corporation, ALPHA BETA ACQUISITION CORPORATION, a Delaware corporation, and LUCKY STORES, INC. a Delaware corporation, Defendants.	Civil No. 88-5331-KN(Tx) COMPLAINT FOR EQUITABLE RELIEF FOR VIOLATION OF TITLE 15 U.S.C. SECTIONS 1 AND 18 AND PENDENT STATE CLAIMS ANTITRUST

Plaintiff State of California, on its own behalf and as parens patriae on behalf of its residents, by and through its Attorney General, John K. Van de Kamp, brings this civil action to obtain equitable and other relief against the defendants named herein for violations of the antitrust laws of the United States and of the antitrust and unfair competition laws of the State of California, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15, 26) to recover for injuries sustained and to prevent and restrain the violation by defendants, as hereinafter alleged, of section 7 of the Clayton Act (15 U.S.C. § 18). This Court has jurisdiction over this action pursuant to Title 28 U.S.C. section 1337.

2. The complaint is filed and the action is also instituted under section 1 of the Act of Congress of July

2, 1890, 15 U.S.C. § 1. commonly known as the Sherman Act, to recover for injuries sustained and to prevent and restrain the violation by defendants, as hereinafter alleged, of section 1 of the Sherman Act (15 U.S.C. § 1). This Court has jurisdiction over this action pursuant to Title 28 U.S.C. § 1337.

3. This Court has pendent jurisdiction over the claims of plaintiff arising out of alleged violations of California Business and Professions Code sections 16720(a), 16720(e)(4), 16726, 16753, 16754, and 16754.5, commonly known as the Cartwright Act and Business and Professions Code sections 17200, 17203, 17204, and 17206, commonly known as the Unfair Competition Act.

4. Venue is proper under section 12 of the Clayton Act (15 U.S.C. § 22) and Title 28 U.S.C. § 1391(b) and (c), since each defendant maintains an office, transacts business, has an agent, or is found within the Central District of California, as a district wherein this claim arises and all of the defendants are doing

business, and each defendant is within the jurisdiction of this Court for the purpose of service of this complaint. The interstate trade and commerce involved and affected by the alleged violations of the antitrust laws is carried on in material part within the Central District of California.

II

DEFINITIONS

5. "Supermarkets" means full-line grocery stores exceeding 10,000 square feet.

III

PLAINTIFF

6. California is one of the sovereign states of the United States, and by and through its Attorney General, John K. Van de Kamp, brings this action as parens patriae on behalf of its residents, pursuant to Title 15 U.S.C. section 26, California Business and Professions Code sections 16760, 17204, and 17206, and the Attorney General's common law powers, to protect the economy

of the state. As a purchaser of products sold by defendants and their competitors, California also brings this action on its own behalf.

IV

DEFENDANTS

7. American Stores Company is made a defendant herein. American Stores Company is a corporation organized under the laws of the State of Delaware with its corporate headquarters and principal place of business at P.O. Box 27447, 444 East First South, Salt Lake City, Utah 84127. American Stores Company does substantial business within the State of California, conducted at retail outlets throughout the state and managed through executive offices located in Irvine, California. American Stores Company, through its subsidiaries, divisions or groups, is engaged primarily in the operation of retail stores, selling drug and food merchandise through approximately 1500 retail drug stores, supermarkets and combination drug and food

supermarkets, in 40 states. It owns and operates approximately 240 supermarkets in California. American Stores Company, its subsidiaries, divisions and groups are sometimes hereinafter referred to as "American."

8. Alpha Beta Acquisition Corporation is made a defendant herein. Alpha Beta Acquisition Corporation is a wholly owned subsidiary of American Stores Company, and is a Delaware corporation having its corporate headquarters in Salt Lake City, Utah and its principal place of business in Irvine, California. Alpha Beta Acquisition Corporation was formed for the purpose of acquiring Lucky Stores, Inc. Alpha Beta Acquisition Corporation, American Stores Company and their respective subsidiaries, divisions and groups are sometimes hereinafter collectively referred to as "American."

9. Lucky Stores, Inc. is made a defendant herein. Lucky is a corporation organized under the laws of the

State of Delaware with its principal place of business in Dublin, California. On December 22, 1986, Lucky Stores, Inc., reincorporated from California to Delaware, adopting a new Certificate of Incorporation. Lucky Stores, Inc. and its subsidiaries division or groups operate supermarkets in Arizona, California, Florida, Illinois, Indiana, Iowa and Nevada, approximately 340 of which are in California. Lucky Stores, Inc., its subsidiaries, divisions and groups are hereinafter referred to as "Lucky."

V

OTHER RELATED PERSONS

10. The Vons Companies, Inc. is a Michigan corporation which, through its subsidiaries, divisions or groups, operates approximately 183 supermarkets in California. The Vons Companies, Inc. has two subsidiaries which are wholly owned, Pantry Food Markets, Inc. of California is a division of The Vons Companies, Inc. and Expo Stores, Inc., which does

business as Tianguis. The Vons Companies, Inc., its subsidiaries, divisions and groups are hereinafter referred to as "Vons."

11. Safeway Stores, Incorporated operates a supermarket chain in California and elsewhere offering broad lines of merchandise, both nationally advertised and private label brands. In support of its retail operations, Safeway Stores, Incorporated operates extensive distribution, manufacturing and processing facilities in California. Safeway Stores, Incorporated, its subsidiaries, divisions and groups are sometimes hereinafter referred to as "Safeway."

VI

TRADE AND COMMERCE

12. A relevant line of commerce or product market is the retailing by supermarkets of food and non-food products.

13. The following areas of California, which are more particularly described in Exhibit 1 to this complaint

which is incorporated herein by reference, are relevant geographic markets:

1. Walnut Creek
2. Oakland
3. Hayward
4. Antioch
5. Richmond
6. Fremont
7. Livermore
8. San Mateo
9. San Francisco
10. Daly City
11. San Rafael
12. Sunnyvale
13. San Jose
14. Gilroy
15. Palo Alto
16. Watsonville
17. Santa Cruz

18. Healdsburg
19. Santa Rosa
20. Sonoma
21. Napa
22. Vallejo
23. Fairfield
24. Monterey
25. Salinas
26. Costa Mesa
27. Anaheim
28. Laguna
29. Viejo
30. Covina
31. Long Beach
32. Los Angeles
33. Pasadena
34. Tujunga
35. Lancaster
36. Ontario

37. San Fernando
38. Santa Clarita
39. Simi
40. Thousand Oaks
41. Oxnard-Ventura
42. Palm Springs
43. Barstow
44. Blythe
45. San Bernardino
46. Victorville
47. Sun City
48. Yucca Valley
49. Banning-Beaumont
50. Riverside
51. Indio
52. El Cajon
53. Chula Vista
54. La Jolla
55. San Diego

56. Escondido

57. La Mesa

58. Oceanside

59. Lompoc

60. Santa Barbara

61. Santa Maria

62. Bakersfield

14. The supermarket industry in the various relevant geographic markets is moderately to highly concentrated.

15. Barriers to entry in the supermarket industry in California are moderate to high.

16. American and Lucky are actual and significant competitors in the relevant product market in almost all of the relevant geographic markets, and are potential significant competitors in the few relevant geographic markets in which they are not actual or direct competitors.

17. Vons and Safeway were actual and significant competitors in the relevant product market in almost all of the relevant geographic markets in Southern California.

18. On or about December 3, 1987, defendant Vons entered into an agreement with defendant Safeway whereby it agreed to purchase the capital stock of four subsidiaries of Safeway. The acquisition of these subsidiaries includes 172 supermarkets and related assets, including warehouses, distribution and processing centers (dairies, ice cream plants and bakeries), currently operated as Safeway's Southern California Division.

19. Under the terms of the agreement for the sale to Vons of Safeway's Southern California Division, Safeway received $325,000,000 in cash, 30% of Vons stock (11.7 million shares), two of the nine seats on Vons' board of directors, and the right to purchase another 5% of Vons' stock in market transactions. The Vons acquisition of Safeway's Southern California

Division received final approval of the Federal Trade Commission on August 31, 1988.

20. American, Lucky, Vons, and Safeway regularly purchase for resale in supermarkets which each operates in California, substantial quantities of food and non-food products which are sold, manufactured and shipped in interstate commerce. American, Lucky, Vons, and Safeway each sell in supermarkets which each operate in California, substantial quantities of food and non-food products which have been in interstate commerce. American, Lucky, Vons, and Safeway are each engaged in interstate commerce, and their activities are in the flow of and substantially affect interstate commerce. Interstate commerce has been and will be affected by each of the merger-acquisitions described in this complaint.

VII

VIOLATION ALLEGED

AS A FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS AMERICAN AND LUCKY FOR VIOLATION OF CLAYTON ACT SECTION 7, PLAINTIFF ALLEGES:

21. Plaintiff realleges and incorporates herein by reference all allegations contained in paragraphs 1 through 20 of this complaint, as though set forth in their entirety.

22. On or about March 22, 1988, defendant American made and announced a cash tender offer of $45 per share for all of the outstanding stock of defendant Lucky. American's stated purpose in the tender offer was to acquire control of, and the entire equity interest in Lucky, and then to effect a merger or similar combination with Lucky. On or about May 17, 1988, American increased its tender offer to $65 per share. The tender offer constitutes a major transaction in interstate commerce with a value in excess of

$2,510,000,000. On or about May 20, 1988, Lucky agreed to merge with American. Plaintiff is informed and believes, and based upon said information and belief alleges, that pursuant to said tender offer American has acquired more than a majority of Lucky's outstanding common shares. The acquisition, if consummated, would give American control of Lucky and permit it to combine Lucky's approximately 340 California supermarkets with American's approximately 240 Alpha Beta supermarkets in California.

23. The acquisition of Lucky by American is but one of two enormous supermarket industry mergers now underway. On or about December 3, 1987, defendant Vons entered into an agreement with defendants Safeway whereby it agreed to purchase the capital stock of four subsidiaries of Safeway. The acquisition of these subsidiaries includes 172 supermarkets and related assets, including warehouses, distribution and processing centers (dairies, ice cream plants and bakeries), currently

operated as Safeway's Southern California Division. Vons operates approximately 183 supermarkets in Southern California.

24. The effect of the acquisition by American of Lucky, if consummated, and in light of the Vons acquisition of Safeway's Southern California Division, may be substantially to lessen competition in the aforesaid trade and commerce in the following ways, among others:

a. Actual or direct competition, and potential competition between American and Lucky in the relevant product market in many relevant geographic markets would be eliminated;

b. Lucky would be eliminated as a substantial and independent competitor in the relevant product market in the relevant geographic markets;

c. Competition between competitors in general in the relevant product market in the relevant geographic markets would be substantially lessened;

d. Significant increases in already high levels of concentration would result in the relevant product market in the relevant geographic markets;

e. Already moderate to high barriers to entry in the relevant markets would be substantially increased;

f. Competition in the relevant product market in the relevant geographic markets may be substantially lessened such that the prices of food and non-food products might be increased.

25. The acquisition of Lucky by American as alleged herein violates section 7 of the Clayton Act (15 U.S.C. § 18).

VIII

VIOLATION ALLEGED

AS A SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS AMERICAN AND LUCKY FOR VIOLATION OF SHERMAN ACT § 1, PLAINTIFF ALLEGES:

26. Plaintiff realleges and incorporates herein by reference all allegations contained in paragraphs 1

through 20 and 22 through 24 of this complaint, as though set forth in their entirety.

27. The proposed acquisition by American of Lucky as alleged herein constitutes a combination and contract in restraint of trade and commerce in violation of section 1 of the Sherman Act (15 U.S.C. §1).

IX

VIOLATION ALLEGED

AS A THIRD CLAIM FOR RELIEF AGAINST DEFENDANTS AMERICAN AND LUCKY FOR VIOLATION OF CALIFORNIA'S CARTWRIGHT ACT, PLAINTIFF ALLEGES:

28. Plaintiff realleges and incorporates herein by reference all allegations contained in paragraphs 1 through 20 and 22 through 24 of this complaint, as though set forth in their entirety.

29. The proposed acquisition of Lucky by American as alleged herein violates sections 16720(a), 16720(e)(4), and 16726 of the California Business and Professions Code, which are part of the Cartwright Act.

X

VIOLATION ALLEGED

AS A FOURTH CLAIM FOR RELIEF AGAINST DEFENDANTS AMERICAN AND LUCKY FOR VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION ACT, PLAINTIFF ALLEGES:

30. Plaintiff realleges and incorporates herein by reference all allegations contained in paragraphs 1 through 20 and 22 through 24 of this complaint, as though set forth in their entirety.

31. By performing the acts alleged above, defendants American and Lucky, and each of them, have engaged and continue to engage in unfair and unlawful trade practices, thereby violating sections 17200, 17203, and 17206 of the California Business and Professions Code.

PRAYER

WHEREFORE, plaintiff prays:

FOR INJUNCTIVE RELIEF, PURSUANT TO THE FIRST, SECOND, THIRD AND FOURTH CLAIMS FOR RELIEF:

1. That pending final adjudication of the merits of this Complaint, a temporary restraining order and a preliminary injunction be issued against the defendants American and Lucky preventing and restraining each of them, and all persons acting on their behalf, from taking any action, either directly or indirectly, in furtherance of the proposed acquisition of Lucky, and requiring American to hold and operate separately from American all of Lucky's California assets and businesses pending final adjudication of the merits of this action; and,

2. That such injunctive relief, including rescission, be ordered as is necessary and appropriate to prevent the effects of the unlawful activities alleged in the First, Second, Third and Fourth Claims for Relief and to

maintain competitive conditions in the relevant markets; and,

3. That the acquisition by American of Lucky's California assets and businesses be adjudged and decreed to be unlawful and in violation of section 7 of the Clayton Act (First Claim for Relief), section 1 of the Sherman Act (Second Claim for Relief), sections 16720(a), 16720(e)(4), and 16726 of the California Business and Professions Code (Third Claim for Relief), and sections 17200 and 17203 of the California Business and Professions Code (Fourth Claim for Relief); and,

4. That the defendants and all persons acting on their behalf be permanently enjoined from carrying out any agreement, understanding, or plan, the effect of which would be to combine the supermarket business of American and Lucky; and

5. That pursuant to 15 U.S.C. § 26 and sections 16753 and 16754.5 of the California Business and Professions Code,the Court issue an injunction requiring

American to divest itself of all of Lucky's assets and businesses in the State of California.

6. That plaintiff be awarded civil penalties in an amount to be determined by the Court pursuant to California Business and Professions Code section 17206.

7. That the plaintiff have such other and further relief as the case requires and the Court may deem just and proper; and

8. That the plaintiff recover attorneys fees and it costs of suit.

DATED: September 1, 1988

JOHN K. VAN DE KAMP, Attorney General
of the State of California
ANDREA SHERIDAN ORDIN,
Chief Assistant Attorney General
SANFORD N. GRUSKIN,
Assistant Attorney General
OWEN LEE KWONG,
H. CHESTER HORN,
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ERNEST MARTINEZ,
Deputy Attorneys General

[Signature block omitted]

[Affidavit of Service not printed]

(EXHIBIT 1 TO THE COMPLAINT FILED UNDER SEAL)

FRANK ROTHMAN
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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, by its Attorney General, JOHN K. VAN DE KAMP, Plaintiff, v. AMERICAN STORES COMPANY, et al., Defendants.	Case No. CV 88-5331 KN(TX) DEFENDANTS' ANSWER

Defendants American Stores Company and Lucky Stores, Inc., ("Defendants") by their attorneys Skadden, Arps, Slate, Meagher & Flom answer the Complaint of the Plaintiff, State of California ("Plaintiff"), as follows:

1. Defendants admit that Plaintiff purports to file the Complaint and institute this action under §§ 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26 and that Plaintiff pur-ports to base this Court's jurisdiction on 28 U.S.C. § 1337, and deny the remaining allegations of Paragraph 1 of the Complaint.

2. Defendants admit that Plaintiff purports to file the Complaint and institute this action under Section 1 of the Act of Congress of July 2, 1890, 15 U.S.C. § 1, commonly known as the Sherman Act, and deny the remaining allegation of Paragraph 2 of the Complaint.

3. Defendants admit that Plaintiff purports to assert claims under California Business and Professions Code §§ 16720(a), 16720(e)(4), 16729, 16753, 16754, 16754.5, 17200, 17302, 17204 and 17206, and that Plaintiff

purports to bring this action pursuant to this Court's pendent jurisdiction, and denies the remaining allegations of the Complaint.

4. Defendants admit that Plaintiff purports to base venue on Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391 (b) and (c), admit that Defendants maintain offices, transact business, have agents, or are found within the Central District of California, admit that Defendants are doing business within the Central District of California, admit that Defendants are within the jurisdiction of this Court for the purpose of service of the complaint, admit that the interstate trade and commerce involved and affected by the alleged violations of the antitrust laws is carried on within the Central District of California, and deny all the remaining allegations of Paragraph 4 of the Complaint.

5. Defendants aver that Paragraph 5 of the Complaint contains certain definitional allegations that do not require a response. Defendants deny the

allegations of Paragraph 5 of the Complaint to the extent that they require an admission of denial.

6. Defendants admit that Plaintiff purports to bring this action as *parens patriae* on behalf of its residents, pur-suant to 15 U.S.C. § 26, California Business and Professions Code Sections 16760, 17204, and 17206, and the Attorney General's common law powers, to protect the economy of the state, admit that Plaintiff also purports to bring this action on its own behalf as a purchaser of products sold by Defendants and their competitors, and deny knowledge or information sufficient to form a belief as to whether Plaintiff actually has made purchases from Defendants.

7. Defendants admit that American Stores Company is a corporation organized under the laws of the State of Delaware, admit that American Stores Company subsidiaries, divisions or groups, are engaged primarily in the operation of retail stores, selling drug and food merchandise, through approximately retail drug

stores, supermarkets and combination drug and food supermarkets, and deny the remaining allegations of Paragraph 7 of the Complaint.

8. Defendants admit that Alpha Beta Acquisition Corporation was formed for the purpose of acquiring Lucky Stores, Inc., deny the remaining allegations of Paragraph 8 of the complaint and aver that Alpha Beta Acquisition Corporation was merged with and into Lucky Stores, Inc., on June 9, 1988 and thereafter ceased to exist.

9. Defendants admit that Lucky Stores, Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business in Dublin, California, admit that on December 22, 1986, Lucky Stores, Inc., reincorporated from California to Delaware, adopting a new Certificate of Incorporation, admit that Lucky Stores, Inc. and it's subsidiaries, divisions or groups operate supermarkets in California and Nevada approximately 340 of which are in California, and deny

the remaining allegations of Paragraph 9 of the Complaint.

10. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Complaint.

11. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of the Complaint.

12. Defendants deny the allegations of Paragraph 12 of the Complaint.

13. Defendants admit that Bakersfield, as more particularly described in Exhibit 1 to the Complaint, is a relevant geographic market, and deny the remaining allegations of Paragraph 13 of the Complaint.

14. Defendants deny the allegations of Paragraph 14 of the Complaint.

15. Defendants deny the allegations of Paragraph 15 of the Complaint.

16. Defendants deny the allegations of Paragraph 16 of the Complaint.

17. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 of the Complaint.

18. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18 of the Complaint.

19. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 of the Complaint.

20. Defendants admit that Lucky and subsidiaries of American purchase for resale in supermarkets which each operation in California, food and non-food products which are sold, manufactured and shipped in interstate commerce; admit that Lucky and subsidiaries of American each sell in supermarkets which each operate in California, food and non-food products which have been in interstate commerce; admit that Lucky and

subsidiaries of American are each engaged in interstate commerce, and their activities are in the flow of interstate commerce, deny knowledge or information sufficient to form a belief as to the allegations that Vons and Safeway regularly purchase for resale in California, substantial quantities of food and non-food products which are sold, manufactured and shipped in interstate commerce that Vons and Safeway each sell in supermarkets which each operate in California, substantial quantities of food and non-food products which have been in interstate commerce, that Vons and Safeway are each engaged in interstate commerce and that their activities are in the flow of and substantially affect interstate commerce; and deny the remaining allegations of Paragraph 20 of the Complaint.

21. In response to Paragraph 21 of the Complaint, Defendants repeat and reallege as if fully incorporated herein all of their answers and averments

with respect to Paragraphs 1 through 20 of the Complaint.

22. Defendants admit that American made and announced a cash tender offer at $45 per share for all the outStanding stock of Lucky, admit that American increased its offer to $65 per share, admit that the tender offer constituted a major transaction in interstate commerce with a value in excess of $2,510,000,000, admit that pursuant to a tender offer, American acquired more than a majority of Lucky's out-standing common shares, deny the remaining allegations of Paragraph 22 of the Complaint, and aver that by June 9, 1988 American owned 100 percent of the shares of Lucky.

23. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23 of the Complaint.

24. Defendants deny the allegations of Paragraph 24 of the Complaint.

25. Defendants deny the allegations of Paragraph 25 of the Complaint.

26. In response to Paragraph 26 of the Complaint, Defendants repeat and reallege as if fully incorporated herein all of their answers and averments with respect to Paragraphs 1 through 20 and 22 through 24 of the Complaint.

27. Defendants deny the allegations of Paragraph 27 of the Complaint.

28. In response to Paragraph 28 of the Complaint, Defendants repeat and reallege as if fully incorporated herein all of its answers and averments with respect to Paragraphs 1 through 20 and 22 through 24 of the Complaint.

29. Defendants deny the allegations of Paragraph 29 of the Complaint.

30. In response to Paragraph 30 of the Complaint, Defendants repeat and reallege as if fully incorporated herein all of their answers and averments

with respect to Paragraphs 1 through 20 and 22 through 24 of the Complaint.

31. Defendants deny the allegations of Paragraph 31 of the Complaint.

32. The remainder of the Complaint following Paragraph 31 contains Plaintiff's prayer for relief and thus does not require a response.

AFFIRMATIVE DEFENDANTS

1. The Complaint fails to state a claim upon which relief can be granted.

2. The Complaint is barred in whole or in part by the doctrines of estoppel and laches.

3. The Complaint is barred in whole or in part by the Supremacy Clause of the United States Constitution.

4. The Complaint is barred is whole in part because Plaintiff lacks standing to sue and the Complaint cannot be prosecuted as a *parens patriae* action on behalf of the general welfare and economy of the State.

5. The Complaint is barred in whole or in part because of the prior action of the Federal Trade Commission.

6. The relief sought is unavailable to plaintiff because of plaintiff's inequitable conduct.

7. Defendants hereby give notice that they intend to rely on such other and further defenses as may become apparent during discovery in this case.

WHEREFORE, having fully answered the allegations of the Complaint, Defendants pray that judgment be entered against Plaintiff:

1. Dismissing with prejudice Plaintiff's Complaint;

2. Denying Plaintiff's request for injunctive relief, rescission, divestiture, and civil penalties;

3. Denying Plaintiff's request for the award of attorneys fess and its cost of suit.

4. Awarding Defendants their cost of suit, attorneys fees and such other and further relief as this Court may seen just and proper.

DATED: October 20, 1988.

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM

By: /s/ Stephen M. Axinn

Stephen M. Axinn

Attorneys for Defendants
American Stores Company
and Lucky Stores, Inc.

[Affidavit of Service not printed]

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.:

I am a citizen of the United States and a resident of or employed in the City of Los Angeles, County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 1706 Maple Avenue, Los Angeles, California 90015.

On November 30, 1989, I served the within Joint Appendix in re: "State of California vs. American Stores Co., Alpha Beta" in the United States Supreme Court, October Term 1989, No. 89-258, on all parties interested in said action, by placing three true copies thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box at Los Angeles, California, addressed as follows:

Rex E. Lee
Carter G. Phillips
Mark D. Hopson
Gene C. Schaerr
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 30, 1989, at Los Angeles, California.

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CE CE MEDINA